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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,163	11/13/2001	Hiroaki Takahata	Q66991	6425

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EXAMINER

RIBAR, TRAVIS B

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 07/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/987,163

Applicant(s)

TAKAHATA ET AL.

Examiner

Travis B Ribar

Art Unit

1711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 25 June 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: The applicant argues that there is no motivation to combine Charrier with any of the combination of references, stating that the examiner has not shown that all commercial EVA has the applicant's claimed ethylene content and has therefore not provided sufficient motivation to combine Charrier with any of the references. The examiner respectfully disagrees that there is insufficient motivation to combine Charrier with the references.

Each of the references with which Charrier is combined disclose generic EVA but do not go into detail regarding the ethylene content of the EVA. Such a generic disclosure indicates that a wide range of EVA's are suitable for the invention, including commercially available EVA. The motivation for using any number of commercially available EVA's, including those disclosed within Charrier, is that the broad teachings of the primary references provide a reasonable expectation that the resulting product will be patentably equivalent to those products disclosed within the primary references. The motivation for using this EVA layer in each of the applications is discussed in the prior office actions.

The applicant's argument that the examiner has not shown that all commercially available EVA contains the claimed amount of ethylene and therefore no motivation is provided relies upon the assumption that the commercially available EVA to which Charrier refers does not constitute a commonly encountered commercially available EVA and that it would therefore be unexpected to select the EVA Charrier discloses when selecting a commercially available EVA. The examiner respectfully disagrees with that assumption, noting that Charrier is a textbook entry and that the teachings therein are assumed to be broad, providing an overall picture of and general rule for the art. The disclosure of the ethylene content of commercially available EVA within Charrier would therefore appear to be an indication of the general nature of commercially available EVA and is sufficient to provide motivation.

The applicant argues that Genske et al. teaches away from using a polyester sealing film and therefore teaches away from the current invention. They state that Genske et al. states that FDA regulations limit the sealing materials that may be used for food applications. The examiner respectfully disagrees.

Genske et al. (column 5, lines 24-26) teaches only that the FDA limits the sealing materials in retort applications, not all food applications, such as those found in Willham et al. (paragraph 34). Genske et al. is not limited to retort applications, and as such it does not teach away from the current invention.

Regarding the applicant's argument that there is no motivation to combine Willham et al. with Genske et al. because of the material limitations Genske et al. discloses regarding the material making up containers used in retort applications, Genske et al. is not limited to retort applications so these limitations alone are not enough to overcome the combination of references.

The applicant objected to the use of the phrase, "that part of the invention", appearing at the bottom of page 5 of the final rejection, believing it to indicate improper hindsight reasoning. The examiner would like to clarify this statement. The phrase, "that part of the invention" simply referred to the part of the invention that Charrier rendered obvious and does not constitute hindsight reasoning.

The applicant also argues that Winter ('061) should be limited in scope to those substrates that might be found in microwave popcorn applications and therefore constitutes nonanalogous art with regard to Genske et al. The examiner respectfully disagrees with limiting Winter ('061) in this manner.

Winter ('061) discloses a multilayer barrier film useful in a broad number of applications not limited to microwave popcorn bags (column 5, lines 12-15). Winter ('061) uses microwave popcorn bags as an example to show the extreme environments its film is capable of withstanding and does not limit the film therein to such applications. Since Winter ('061) is not limited in that manner, it still constitutes analogous art and is still combined with Genske et al. and Charrier in the manner shown in the final rejection.

The examiner therefore maintains all rejections put forth in the final rejection.



James J. Seidleck
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